1952. **File No.** O. Road Trans. Corp. 152

Legal Deptt.

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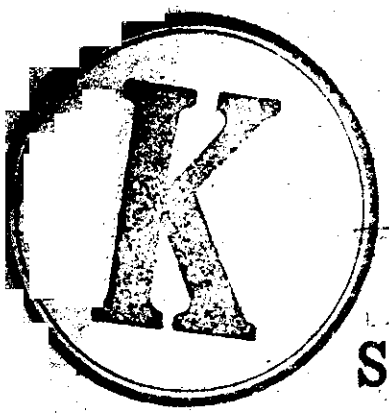

Subject:— Opinions under the Road Transport Corporations Act 1950

File No. O. Road Trans. Corp. 152

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Bale.M.S.
25/6/56.

Office of the R.L.A.

Road Transport Corporation Act, 1950. Section 30.

The Motor Transport Controller of the State of Bombay has proposed that the Corporation may be allowed to calculate roughly the balance from the net profits likely to be accrued during the year which could be made over to Government for the purposes of road development and within this limit the programme of road improvement might be chalked out and the work of actual improvement started without having to wait till the account of the year is complete. Secretary, H.D., has requested the R.L.A. to advise whether the proposal is legally feasible.

2. Section 30 of the Road Transport Corporation Act, 1950, provides that after making provision for payment of interest and dividend, reserve and other funds, the Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers, welfare of labour employed by the Corporation and for such other pruposes as may be prescribed with the previous approval of the Central Government and the balance shall be made over to the State Government for the purpose of road development. Unless the accounts are settled, it would not be possible to ascertain the net annual profits of the Corporation nor would it be possible to ascertain what percentage of such net annual profits should be utilised for providing amenities to passengers, etc. Further, only the balance after providing for such amenities is to be made over to the State Government. Unless, therefore, it is determined what amount has been made over to the State Government for the purposes of road development, no estimates

relating to the expenditure on roads can be submitted to the Legislature under article 203(2) of the Constitution and without the sanction of the Legislature no expenditure could be incurred by the State Government. In these circumstances, the proposal made by the Motor Transport Controller is apparently not legally feasible.

Id/-

27/3.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 4732, dated the 28th March 1952.

Office of the R.L.A.

Section 18 of the Road Transport Corporation Act, 1950, cannot be used for the purpose of writing off irrecoverable amounts of revenue, cash, irrecoverable value of stores, etc. Generally, power for this purpose is expressly given in analogous statutes (see for example section 152 of the Bombay Provincial Municipal Corporation Act, 1949). There is no specific provision in the Road Transport Corporation Act for this purpose. Clause (n) of sub-section (2) of section 44 cannot also be used for this purpose since in terms it refers to matters which have been or may prescribed and this is not one of such matters. Rather than depend upon the general provisions of sub-section (1) of section 44, it would be safer to take the power under clause (m) of sub-section (2) of section 19, which confers power upon the Corporation with the prior approval of the State Government to do all other things to facilitate the proper carrying on of the business of the Corporation. Writing off irrecoverable amounts of revenue, cash, etc., is a necessary element of the proper carrying on of business. The Corporation may, therefore, seek prior approval of the Sikkim State Government and take power for this purpose in suitable terms. It would be for the State Government todecide whether the power should be circumscribed by certain appropriate conditions regarding the limit of the amount to be written off and the circumstances in which it may be written off.

Id/-
14/5-
Remembrancer of Legal Affairs.

U.R. to H.D., No. 8040, dated the 14th May 1952.

MSR.
22/6.

Office of the R.L.A.

Chapter II of the Road Transport Corporations Act, 1950, deals with the constitution and organization of the Road Transport Corporation and its administrative machinery. Section 12 in that Chapter provides that the Corporation may from time to time by Resolution passed at a meeting :

(a) appoint committees of its members for performing such functions as may be specified in the resolution;

(b) delegate to any such committee..... subject to such conditions and limitations, if any, as may be specified in the Resolution such of its powers and duties as it may think fit.

These are specific provisions for the appointment of committees and delegating powers to them. Section 19 deals with the powers of Corporation, and clause (m) of sub-section (2) of that section includes among these powers the power with the prior approval of the State Government to do all other things to facilitate the proper carrying on of the business of the Corporation. This is a clause of residuary power and the word "other" shows that the residuary powers must be of the class instances of which are given in the preceding clauses. This clause does not contain any instance of the power of setting up of a committee or other administrative machinery but concerns itself more with the main business of transport and its ancillary business.

Section 34 which occurs in th

"Miscellaneous" reads as follows:

> "(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation, general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks."

Sub-section (2) of that section further provides that in the exercise of its power and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government. This sub-section is also of a general nature, and it is directed more towards the exercise of powers and performance of duties rather than to the constitution and organization of the Corporation and its administrative machinery. The general instructions are intended to be of the nature of directives for guiding the exercise of powers and performance of duties, and it will be noted that "Powers and Duties of Corporation" is the heading Chapter III. It would, therefore, follow that the general directions are intended for the purpose of guiding the exercise of powers and performance of duties as given in that Chapter and should not ordinarily be concerned with the matters dealt with in Chapter II. In no case can such instructions and directions be issued for the purpose of

modifying the constitution and organization which has been set up under Chapter II. Moreover, even otherwise the maxims of interpretation are well-known, namely, that the express mention of one thing implies the exclusion of other, and also that general words and powers cannot be availed of for overriding special provisions. Section 12 having in terms made provision for the constitution and empowerment of committees, it would not be permissible to fall back on the general words of section 34 or 19(2)(m), even assuming that they were otherwise capable of granting the power to set up committees which, it must be said, they are not for the reasons given above.

2. In short, therefore, the proposal to set up committees by reference to the powers under section 19(20(m) and section 34 would not be legally feasible.

Id/-

1/5.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 6867, dated the 1st May 1952.

MSR.
23/6.

Office of the R.L.A.

In his letter at p.127 ante the Motor Transport Controller presumes that the substance of the provisions of section 5 of the Road Transport Corporation Act and Rule 3(2) of the Bombay State Road Transport Corporation Rules, 1952, is that the Central Government can nominate its representatives either to be whole-time or part-time members but the actual appointment on the Corporation either as whole-time or part-time members according to the provisions of the Act rests with the State Government, and has proposed that Rule 3(2), which provides for power of the Central Government to appoint one or more of its representatives, would, unless modified, amount to State Government having delegated its right of appointment, provided in the Act to the Central Government and consequently such rule would be ultra vires of the Act. R.L.A. is requested to advise.

2. Section 5(1) of the Road Transport Corporation Act provides that subject to rules made under this Act, a Corporation shall consist of a Chariman and such number of other members as the State Government may think fit to appoint. Sub-section (3) goes on to provide that Rules made under this Act shall provide for the representation both of the Central Government and of the State Government concerned in the Corporation in such proportion as may be agreed to by both the Governments and of nomination by each Government of its own representatives therein.

Reading these provisions together it is quite clear that the scheme is that the State Government has to appoint, i.e., to fix the number of other members, whereas the actual appointment or nomination within that number is to be made by the respective Governments. Rule 3(2) of the Bombay State Road Transport Rules is quite consistent with this scheme. It follows, therefore that the Central Government is given the power to nominate its representatives, and it is not correct to say that the actual appointment of the member nominated by the Central Government is to be made by the State Government.

3. The second question raised for the consideration of the R.L.A. is about the interpretation of rule 8 of the Bombay State Road Transport Corporation Rules, 1952. Rule 8 provides that the number of members necessary to constitute a quorum at a meeting of the Corporation shall be five including the Chairman. This provision is in no way ambiguous. The Motor Transport Controller has raised a doubt as to whether this would be tantamount to the Chairman's presence being essential to form a quorum. He observes that the intention is obviously that either five members excluding the Chairman or four members plus the Chairman would form a quorum. The Chairman is an integral part of the meeting and he is appointed from among the members of the Corporation. Consequently, the Chairman does not cease to be a member and the five members to form a quorum would include the Chairman.

Id/- 1/7.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 10978, dated 2nd July 1952.
MSR. 23/6.

Office of the R.L.A.

The view expressed by Secretary, H.D., in his note at p.53 ante that the proposal made by the Motor Transport Controller would not be legally feasible is correct. It will not also be feasible to permit Committees formed under section 12 to associate officers with its work. In the first place these Committees are to be appointed out of members of the Corporation which itself excludes association of any outsiders since such association would be directly in conflict with the constitution as prescribed by the statute. Section 10 of the Act no doubt authorises the Corporation to associate any person whose assistance and advice it may desire, but such association is with itself. i.e., with the Corporation, and the status of a person so associated has also been defined in clause (2) of that section. Association under this section cannot be construed as a power but must primarily be treated as a matter of the constitution or organisation of the Corporation (cf. the headings of Chapter II and Chapter III) Even assuming that it is treated as a power, it is incapable of delegation. The underlined words and clause (2) make it clear that is is a power which must necessarily be confined to the Corporation itself and cannot by delegation be extended to Committees formed under section 12. Therefore, no formal association of officers with the Committee's work is possible. There is of course no bar to an informal association of

of officers with the Committee's work is possible. There is of course no bar to an informal association which would merely mean ad hoc informal consultation but not participation in deliberations or decisions, let alone sharing of responsibilities and powers.

2. The next proposal made by Secretary, H.D., in his note dated 21-6-1952 ante is whether the General Manager who may be authorised to exercise very wide powers can set up advisory organisations that he desires. As stated above, the power of associating itself with outsiders can be exercised only by the Corporation under section 10. This power cannot be delegated to the General Manager. Further, section 17 provides for the formation of Advisory Councils. But this power is vested in the State Government and only for the purpose of advising the Corporation. In the absence of any specific provision in the Act, it would not be competent for the General Manager to set up formally his own advisory machinery.

Id/-
19/7.
Remembrancerof Legal Affairs.

U.R. to H.D. No. 11985 dated the 21st July 1952.

MSR.
23/6.

Office of the R.L.A.

The Resolution passed by the Bombay State Road Transport Corporation is very widely worded inasmuch as it contemplates the recovery of compensation for the loss or damage suffered by the Corporation or compensation paid to an outside party by the Corporation as a result of any accident caused by the employee, without making any further distinction as to whether the liability is to be fixed only in cases where the accident is attributable to the negligence of the employee concerned. Under the general law "it is the servant's duty to take proper care of such property of the master as is entrusted to his charge and to exercise reasonable care and skill in the discharge of his duties; and for negligence in these respects the servant may be made liable to the master in damages. There is, however, no such breach if the loss is occasioned by mere accident or circumstances beyond the servant's control." (Halsbury's Laws of England, 3rd vol.22 pp.183-184). As explained in the Corporation's note, the powers granted under the Resolution are to be utilised only in cases of negligence; but the Resolution does not say so in terms. On the question of recovery, it appears that the Payment of Wages Act, 1936, has not been extended to the transport services. Therefore, the powers given under sub-section (2) of section 7 and section 10 of that Act will not be available except in cases of persons

employed in the factories of the Corporation. In the case of other persons the question whether deduction can be made or not will depend on the terms of their employment. In these circumstances the R.L.A. would suggest that the question should be considered in its detailed aspects with special reference to negligence, the capacity of the employee to pay and the mode of recovery from him; and if necessary, advantage may also be taken of the power given under section 19(1)(c) of the Road Transport Corporations Act, 1950, to frame a suitable condition of service in this behalf.

Id/-
28/8.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 14113, dated 29th August 1952.

MSR.
23/6.

Office of the R.L.A.

Under the rule 3(2) of the Bombay State Road Transport Corporation Rules, 1952, the contributing Governments may appoint one or more of its representatives to be whole-time members of the Corporation. Under rule 5(2) an official member appointed as a whole-time member shall be entitled to such salary and allowances as may be specified by the State Government or the Central Government. Official members who are part-time members shall not be eligible to any allowances except as provided in rule 6. Rule 6(2) provides that the official members who are part-time members shall be eligible to draw such travelling and daily allowances as may be admissible to them under the rules governing such members, provided such members shall not draw travelling or daily allowance admissible under these rules if for the same journey or for the same halt they have drawn travelling or daily allowance as the case may be from the Government treasury.

2. The first question for consideration is whether Shri Mahida who continues as Chief Engineer to Government, Roads and Buildings, P.W.D can be treated as a whole-time member of the Corporation. The answer to that question is in the negative. It is obvious that a person who is a whole-time Government servant in one capacity cannot also be a whole-time member of the Corporation, for the simple reason that he cannot devote the whole of his time to two duties simultaneously. In that view Shir Mahida must

necessarily be treated as an official part-time member; and, therefore, under the latter part of sub-rule (2) of rule 5, he will not be eligible to any allowances except as provided in rule 6. The scheme of the Rules seems to be that where an official is deputed to work as a whole-time member of the Corporation, Government can specify his salary and allowances in his new capacity as a whole-time member of the Corporation. The scheme does not contemplate that an official should simultaneously draw his salary as a Government official and an additional salary as a whole-time member of the Corporation. Where a person continues to hold his Government post and draws salary and allowances, he becomes eligible only for travelling and daily allowances, under sub-rule (2) of rule 6.

3. It may be pointed out that even upon the assumption which as said above cannot be made that Shri Mahida is a whole-time official member, his salary and allowances are to be specified by the State Government. They cannot be specified by the Corporation. The resolution of the Corporation granting him a conveyance allowance of Rs. 250/- and a special pay of Rs. 200 would, therefore, be ultra vires.

Id/-
20/11.
Remembrancer of Legal Affairs.

U.R. to H.D. No. PS. 19371/A, dated
20th November 1952.

MSR.
23/6.

Office of the R.L.A.

In the loan notification issued by the Bombay State Road Transport Corporation dated 5th October 1952, the objects of the loan were described as follows:-

> "The loan is being raised for the purpose of supplementing the capital available for purchase of vehicles, building of workshops, depots, garages and warehouses necessary for the carrying on of the business of the Corporation."

Section 26 of the Road Transport Corporation Act, 1950, defines the borrowing powers of the Corporation in the following terms:-

> "A Corporation may with the previous approval of the State Government borrow money in the open market or otherwise for the purpose of raising its working capital."

The scheme of Chapter IV, particularly of sections 23, 24 and 26, shows that a distinction is made between capital as such and working capital, and that the borrowing powers are confined to the working capital, whereas additional capital is to be provided either by the Government's concerned, or, where it is not so provided, by the issue of shares. The expression "working capital" has known connotation; and all the definitions of that expression agree that working capital is different from fixed assets. Working capital is the amount left for working the business, with, after the pruchase price of the necessary fixed assets has been paid. "Working capital" is defined

in the Accountant's Dictionary edited by F.M. Pixley as follows:.

> "The capital introduced into a business less the amount locked up in fixed asset -s, and the permanent amount of book debts and stock-in-trade, plus permanent loans and the permanent amount owing to creditors, that,is, the amount which is available for conducting its operations and which is continually circulating. The working capital thus fluctuates considerably in amount, and the amount under control requires to be carefully watched."

There would have been no objection for raising the loan for working capital in this ~~xx~~ sense; and it must be said that strictly speaking the o loan does not fall within the scope of the borrowing powers given by section 26 in so far as it ~~was~~ far as it was avowedly being raised for the purpose of supplementing capital assets and not for working capital. To that extent,. the objection taken by the Examiner, Outside ~~xx~~ Audit Department, is valid.

2. However, it should be possible to regularise the position. This is not a case of borrowing beyond the limit of borrowing powers, which will of course be <u>ultra vires</u> and, therefore, void; but borrowing for an object other than that prescribed by the statute. It is, therefore,

a case of the total absence of borrowing
ers. The Corporation can, therefore, proceed
regularise the position by taking suitable
ion declaring that the loan will be utilized
working capital and that arrangements for
purchase of fixed assets will be made through
er sources. In proceeding to make such a
laration, the Corporation will not be causing
prejudice to the investors. If the power to
row is possessed, a lender making a loan is
bound to inquire of the purpose for which
loan is required. Moreover, the lender in
s case would be indifferent inasmuch as the
te of Bombay has guaranteed the loan and the
erest thereon.

Id/-

26/10.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 17763/A, dated 27th October 1952.

NSR.
25/6.

not a case of the total absence of borrowing powers. The Corporation can, therefore, proceed to regularise the position by taking suitable action declaring that the loan will be utilized for working capital and that arrangements for the purchase of fixed assets will be made through other sources. In proceeding to make such a declaration, the Corporation will not be causing any prejudice to the investors. If the power to borrow is possessed, a lender making a loan is not bound to inquire of the purpose for which the loan is required. Moreover, the lender in this case would be indifferent inasmuch as the State of Bombay has guaranteed the loan and the interest thereon.

Id/-

26/10.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 17763/A, dated 27th October 1952.

MSR.
23/6.

Office of the R.L.A.

Audit expenses - Road Transport Corporations Act, 1950. Sections 33(2), 41(1) and 44.

Under section 33(2) of the Road Transport Corporations Act, 1950, the accounts of a Corporation shall be audited by the auditor appointed by the State Government at such times and in such manner as may be prescribed. The Bombay Government has appointed some staff for auditing the accounts of the Bombay State Road Transport Corporation. The Accountant General has reported that the staff sanctioned by Government is not sufficient for the purpose and has asked for sanction of an additional staff, but the Corporation appears to be unwilling to bear the expenses for the additional staff asked for by the Accountant General. The question raised for the R.L.A.'s consideration is whether the objection of the Corporation is valid.

Under section 33(2) the power to appoint an auditor to audit the accounts of the Corporation vests in the Bombay Government. There is, however, no express provision in the Act as to who should bear the expenses of such audit. Ordinarily, in the absence of any such provision, the expenses of the auditing would have to be borne by Government (See Thomas v. Davenport Corporation 1900 1Q.B.D. 16). However, in exercise of the powers conferred by section 44, the Bombay Government has made the Bombay State Road Transport Corporation Rules, 1952. Under Rule 13 the procedure for framing the budget has been prescribed. Sub-rule (2) provides that the budget estimates shall give the anticipated receipts and expenditure for the

financial year to which it pertains under the Major, Minor, Sub and detailed Heads of account in the form in Schedule I. Clause XVII(10) of Schedule I, relates to audit fees. It is, therefore, apparent that a provision has been made in the Rules for payment of audit fees and the only audit which has been provided for being under section 33(2), the audit would necessarily relate to the audit by the auditor appointed by Government. Consequently, the Corporation would be liable to pay the audit fees.

Section 41(1) enacts that a Corporation shall be deemed to be a local authority within the meaning of the Motor Vehicles Act, 1939. It would, therefore, be possible to hold that the fund of the Corporation wouldbe deemed to be a local fund as the Corporation is a local authority within the meaning of Rule 368 of the Financial Rules under Devolution Rule 37(e). Fees for such audit can be charged on the basis of daily rates as per scale prescribed. The scale prescribed is Rs. 15 per day for each junior auditor and Rs. 35 per day for each senior auditor included in the party (See Financial Rules page 175). F.D. may therefore, consider whether the fees contemplated by clause XVII of Schedule I to the Bombay State Road Transport Corporation Rules are the fees prescribed under the Financial Rules. If not, Government, will have to make specific provision by expressly providing in the Rules under section 44(1) requiring the Corporation to bear all the expenses incurred by Government for the purpose of auditing.

of auditing.

Id/-

15/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 21191/A,

dated the 16th December 1952.

MSR.
23/6.

Office of the R.L.A.

Building of bodies for Motor Vehicles of other States. Road -- Transport Corporations Act, 1950.

Section 19.

Building of bodes for vehicles of other States would not ordinarily fall within the powers of the Coporation as enumerated in sub-section (1) of section 19 of the Road Transport Corporations, Act, 1950, but sub-section (3), appears to enlarge the powers conferred by sub-section (1); for, it expressly allows the corporation to undertake activities enumerated in clauses (i) to (iv) with the previous approval of the State Government. There is no reason to cut down the scope of this sub-section. It is true that where a Corporation is created by statute its powers are limited and circumscribed by the statute creating it and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to or consequential upon, those things which the legislature has authorised (Halsbury's Laws of England, Vol.VIII,p.72). However in gathering the true scope of the powers of the Corporation established under the Road Transport Corporation Act, 1950, section 19, must be read as a whole and regard must be had not only to the provisions of sub-section (1); but to the provisions of other sub-sections also. The provisions of sub-section (3) which empower the Corporation to undertake additional activities with the previous approval of the State Government, would be rendered redundant if effect is not to be given to the plain import of those words. In the circumstances, it

appears that having regard to the plain words of clause (i) of sub-section (3), it would be competent to the Corporation to undertake body-building work for the Madhya Bharat Government, provided approval of the State Government is obtained by it as required by sub-section (3).

Id/-

15/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No.21253/A, dated the 17th December 1952.
Please also see R.L.A.'s opinion No. 363/A,
dt. 7th Jan. '53.

MSR.
25/6.